

EXHIBIT M

In the Matter of:

Babcock & Wilcox
Adversary Proceedings

Dr. Mark Peterson
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[13] MR. INSELBUCH: You are catching [14] on.

[15] MR. BERNICK: We will get broad [16] later on.

[17] BY MR. BERNICK:

[18] Q: Is it true, Dr. Peterson, that [19] no scientific study has been done that will [20] tell you how much either malignant or [21] nonmalignant disease has been caused by any [22] particular company?

[23] A: I think that's impossible to do.

[24] Q: I didn't ask you that. I just [25] asked you whether any such study has been done.

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[1] A: Well, if it's impossible, no one [2] has done it.

[3] Q: Is it true that science cannot [4] tell us, with respect to any particular [5] company, how much either nonmalignant or [6] malignant disease a particular company has [7] caused?

[8] A: I think that that's probably [9] wrong. I don't think it is an impossibility in [10] a — I don't think it is an impossibility.

[11] Q: Has that ever been done, that [12] you are aware of?

[13] A: It's never been done, that I'm [14] aware of.

[15] Q: Is it true that science cannot [16] tell us, with regard to any particular company, [17] how much either malignant or nonmalignant [18] disease that company will cause in the future?

[19] That is, how much disease will [20] arise from the conduct of that company in the [21] future?

[22] A: Actually, I think studies like [23] that have been done.

[24] Q: Which studies?

[25] A: Mount Sinai did a number of

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[1] epidemiological studies of particular sites, [2] particular places, so they could have projected [3] into the future the probabilities of cancer [4] nonmalignancies for people working at that [5] site.

[6] So I think there have been such [7] studies done.

[8] Q: But you are now talking about a [9] site.

[10] I'm talking about a particular [11] product or a particular company.

[12] Are you aware of any study [13] that's been done that has told us how to [14] predict how much disease will arise from the [15] conduct of a particular company?

[16] I'm talking about [17] asbestos-related disease.

[18] A: I'm not aware of any done. [19] I don't know whether or not it [20] can be done.

[21] Q: Would you agree with me, [22] Dr. Peterson, that for any given company, [23] science can't tell us how many claims for [24] malignant or nonmalignant disease will actually [25] be filed in the future?

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[1] A: Would you read that question [2] back?

[3] Q: Yes. [4] Would you agree with me that for [5] any given company, science can't tell us how [6] many claims for malignant or nonmalignant [7] disease will actually be filed in the future?

[8] A: No. [9] No, I don't agree with that.

[10] Q: Would you tell me the scientific [11] methodology that predicts how many claims will [12] actually be filed for malignant or nonmalignant [13] disease in the future?

[14] A: Well, first of all, sitting here [15] today, a scientific prediction of that, you [16] don't know whether it's going to be actual or [17] not.

[18] We can reconvene in 2050 and see [19] if they were right or not, but right now you [20] can't, because the future is the future.

[21] Some methods that are used to [22] project these future numbers of claims really [23] draw on two sides, epidemiology and the [24] behavioral science of claiming, so they are [25] both sciences. One's a hard science and one's

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[1] a behavioral science.

[2] And they make projections. [3] Whether they are true or not, we will have to [4] wait and see.

[5] Q: Epidemiology can't tell us how [6] many claims will be filed against a given [7] company for an asbestos-related illness.

[8] Correct?

[9] A: Unless they were done for a [10] particular site, as you said.

[11] But I don't know of any such [12] studies that were done that broadly that could [13] do that.

[14] And that's not the province [15] of —

[16] Q: When it becomes to behavioral [17] sciences, are you aware of any behavioral [18] scientific study that will predict for us how [19] many claims will be filed against a given [20] company for asbestos-related illness?

[21] A: Sure.

[22] Q: Will you tell us what behavioral [23] scientific study has been done that predicts [24] for us how many claims will be filed against [25] any given company

for asbestos-related illness?

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[1] A: Every one I've done.

[2] Q: You are telling us that the [3] estimates that you've done constitute [4] behavioral scientific studies?

[5] A: Yes.

[6] Q: Is it true, Dr. Peterson, that [7] when you talk about how many claims will be [8] filed against a company, you refer to that [25] [9] "propensity"?

[10] A: For cancer claimants' propensity [11] to sue, yes.

[12] Q: When you refer to how many of [13] those will be filed, that's not propensity?

[14] A: I don't use that phrase there, [15] no.

[16] Q: What phrase do you use?

[17] A: I don't really have any handy [18] phrase.

[19] Claiming rate, number of claims.

[20] Q: Would you agree with me that [21] propensity to sue is affected by continuing [22] asbestos litigation?

[23] A: I don't know how to answer that [24] question.

[25] Q: Well, aren't those your words?

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[1] You've written that propensity [2] to sue is affected by continuing asbestos [3] litigation.

[4] A: I still have difficulty [5] understanding — I don't understand what you [6] are meaning by it.

[7] Q: Well, would you agree with me [8] that there are many factors that affect [9] propensity to sue?

[10] A: Yes.

[11] Q: Tell me what factors there are [12] that affect propensity to sue.

[13] A: There's a lot. [14] Activity of the plaintiffs bar, [15] certainly. That can be subdivided in many [16] ways.

[17] Publicity about asbestos-related [18] — you are speaking about asbestos cases?

[19] Q: Yes.

[20] A: Publicity about asbestos-related [21] disease, publicity about asbestos litigation, [22] publicity about particular litigation events in [23] the past.

[24] There's publicity about asbestos [25] trusts and other facilities.

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[1] The kind of opinions and [2] positions and advice of medical professionals.

[3] The efforts of organized labor [4] in identifying asbestos claimants.

[5] The level of discussion among [6] potential claimants and persons who

have [7] already made claims, so the social networks [8] involved with asbestos litigation.

[9] The general social attitudes [10] about litigation and becoming a participant in [11] litigation.

[12] The seriousness of diseases. [13] Probably the amount of assets [14] available to compensate claims.

[15] The kinds of processes that one [16] would have to go through if you filed a lawsuit [17] or made a claim.

[18] There are others. Those come to [19] mind.

[20] Q: Are there also other factors [21] that will affect the propensity to sue a [22] particular company?

[23] A: There are factors that will [24] affect the propensity to sue individual [25] companies, of course.

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[1] Some of them are just subsets of [2] what I've listed.

[3] Q: You've just listed for me a [4] whole series of factors.

[5] There could be ten, fifteen, [6] twenty different factors that could affect [7] propensity to sue a particular company or [8] generally.

[9] Correct?

[10] A: I think that's right.

[11] Q: Are you aware of any statistical [12] study that analyzes the impact of any one of [13] those different factors on the rate of claiming [14] against a particular company?

[15] MR. INSELBUCH: Objection.

[16] THE WITNESS: I'm aware of [17] statistical studies that examine the effects of [18] some of those on particular companies.

[19] I'm aware of statistical studies [20] that examine the effects of some of those [21] generally.

[22] BY MR. BERNICK:

[23] Q: What particular companies?

[24] A: Well, I think any of those you [25] quoted me earlier about the ups and downs of

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[1] litigation.

[2] Q: You've got a background and [3] training in statistics, I know.

[4] A: Yes.

[5] Q: In a statistical study, there [6] are rules that you follow for the conduct of [7] the study.

[8] Correct?

[9] A: It depends on what you are [10] doing.

[11] There are different procedures [12] and methods that you use depending on

the [13] particular problem you are dealing with.

[14] Q: In particular, if you want to [15] find out whether a factor or a variable affects [16] an outcome, there are particular statistical [17] procedures that you are to follow if you want [18] the study to have validity.

[19] Correct?

[20] A: You are talking more broadly [21] now.

[22] You use statistics in certain [23] kinds of studies, experimental studies, [24] epidemiological studies, quasi experiments, [25] where you try and look at the effect of a

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[1] particular event on some other behavior, [2] practice, whatever.

[3] So statistics are a tool that is [4] used in those kinds of studies, yes.

[5] Q: With respect to any of the ten [6] or twenty different variables or factors that [7] you've listed as affecting propensity to sue, [8] are you aware of any studies which have found [9] statistically significant correlations between [10] those factors and the propensity to sue a [11] particular company?

[12] MR. INSELBUCH: Objection.

[13] THE WITNESS: I don't think [14] anyone has undertaken those kinds of studies.

[15] BY MR. BERNICK:

[16] Q: Are you aware of any studies [17] that have been done which take any of the ten [18] or twenty different factors that you say affect [19] propensity to sue and determined whether there [20] is a statistically significant correlation [21] between those factors and the propensity to sue [22] generally?

[23] MR. INSELBUCH: Objection.

[24] THE WITNESS: There are studies [25] that have looked at some of those factors and

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[1] how they are statistically and significantly [2] related to making claims generally, and those [3] are, of course, applicable to particular [4] companies.

[5] BY MR. BERNICK:

[6] Q: Are any of those studies focused [7] specifically on asbestos litigation?

[8] A: Which particular studies?

[9] Q: Are you aware of any studies [10] that have taken a look at factors affecting [11] propensity and found a significant correlation [12] between those factors and propensity to file [13] asbestos claims or asbestos litigation?

[14] A: Certainly there are many studies [15] that have looked at how particular

factors [16] among those I've enumerated have impacted [17] litigation, and they have looked at and [18] provided statistics about it.

[19] Now, whether they used [20] correlation as a particular kind of [21] statistic

[22] Q: That's what I'm asking you [23] about.

[24] A: And —

[25] Q: I'm sorry. If I've interrupted

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[1] you or cut you off, I apologize.

[2] I want to know if there are any [3] studies that find statistically significant [4] correlations between any of those propensity [5] factors and the actual rate of asbestos [6] litigation or claims.

[7] A: I don't think they have set out [8] to use regression methods or simple correlation [9] to do that. I don't think anyone has tried to [10] do that.

[11] Q: Let's focus, again, on a [12] particular company.

[13] Are you aware of any statistical [14] study that's ever been done which has analyzed [15] the asbestos claim filings against a given [16] company and determined what factors are [17] statistically correlated with the claim-filing [18] rate?

[19] A: I guess I don't understand your [20] question.

[21] Q: There are all kinds of companies [22] with asbestos liabilities in the history of [23] claims being made against them.

[24] Right?

[25] A: There are.

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[1] Q: Are there any statistical [2] studies that you are aware of that have [3] analyzed any one of those companies and [4] determined what factors are statistically [5] significant in producing the rate of filing?

[6] A: Well, statistical significance [7] tests are only used in particular [8] circumstances.

[9] There are descriptive statistics [10] that describe what's going on.

[11] Q: That's —

[12] A: — and if you are looking at a [13] population, you don't look use statistics, and [14] statistics arise out of sampling procedures.

[15] So it's not a relevant matter, [16] and I guess the answer is no.

[17] Q: Well, before you can, from a [18] statistical point of view, say that a given [19] factor is associated significantly with the [20] rate of claim filing, you'd have to conduct a [21] study, gather data, and look for that [22] correlation using established statistical [23] methods.